

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JOHN DOE AND JANE DOE FOR
THEIR MINOR DAUGHTER, H.S.
Plaintiffs

V.

SILSBEE INDEPENDENT
SCHOOL DISTRICT, et al
Defendants

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CIV. ACT. NO. :09-CV-374-TH

PLAINTIFFS RESPONSE TO DEFENDANTS MOTION FOR
ATTORNEY'S FEES AND COSTS, AND
OPPOSED MOTION TO STAY PENDING APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Plaintiffs and respond to Defendants Motion for Attorney Fees and Costs; and in response would show the following:

1. Defendants have moved to dismiss and the court granted their motions.
2. Plaintiffs have appealed to the United States Court of Appeals for the Fifth Circuit, which appeal is currently pending.
3. Defendants are premature in their motion for fees and costs since they are only entitled to fees and costs as prevailing parties.
4. On the day that Plaintiffs filed their Notice of Appeal (Dkt. No. 44),

October 21, 2009, Defendants filed their Motion for Attorney Fees.

5. Plaintiffs filed their Notice of Appeal on October 21, 2009, and the District Court ordered or District Clerk *sua sponte* struck the filing for improper notice because Plaintiff's counsel filed the Notice of Appeal in a Houston case. The proper notice was filed in Dkt. No. 48.
6. The case is on appeal and the merits of the case are being determined by the Court of Appeals. Plaintiffs adopt their Appellants' Brief before the Court of Appeals for the Fifth Circuit and asks that the District Court take notice of that document.
7. Defendants are not prevailing parties, and Plaintiffs claims herein are not frivolous. *White v. South Park Independent School Dist.*, 693 F. 2d 1163, (CA , 5th, 1982).
8. Plaintiffs appealed the case in total to the Court of Appeals.
9. Even despite the fact that this case has been appealed, Silsbee ISD Defendants have persisted in arguing that this case is without merit, frivolous and they are deserving of attorney's fees and costs.
10. Plaintiffs Move and ask the District Court to stay Defendants' subject Motion pending entry of final judgment herein.

Respectfully submitted,
WATTS & ASSOCIATES
/S/ LW

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CERTIFICATE OF CONFERENCE

I, Larry Watts certify that on February 24, 2010, I emailed to Mr. Tanner Hunt an inquiry as to whether he opposes the Motion to Stay made a part of the Response to his Motion for Attorney's Fees and Costs, and he opposed.

/S/ LW

Larry Watts

CERTIFICATE OF SERVICE

I, Larry Watts certify that a true and correct copy of this document has been served on opposing counsel by filing with the United States District Clerk's CM/ECF filing system on this the 24th day of February, 2010 (March 3, 2010).

/S/ LW

Larry Watts